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15 Aug 61

MEMO FOR: Chief, Regulations Unit

SUBJECT: Review of HR 8299, amending the Administrative Expenses Act of 1946 relating to contracts by the departments and establishments of the Government for the services of experts and consultants

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USE OF CONSULTANTS AND EXPERTS

Reference: Paragraph 2, R []

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- Rescissions: (1) CIA Regulation No. []
- (2) Applicable provisions of Confidential Funds Regulations 5.1c, 5.7a through f, and 14.6. (Provisions of these Regulations which pertain to covert consultants shall continue to be effective until superseded.)
- (3) []

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1. GENERAL

This regulation prescribes policies and procedures for the use of consultants and experts in accordance with the authorities contained in section 15 of the Act of August 2, 1946, (Public Law 600, 79th Congress) and section 10 of the Central Intelligence Agency Act of 1949 (Public Law 110, 81st Congress). This regulation does not apply to covert consultants.

2. DEFINITIONS

a. CONSULTANT

A consultant is an individual with unusual, special skills, knowledge, or experience who is hired to serve the Agency in an advisory capacity. He may perform duties such as recommending solutions to problems of a highly technical nature, serving as a technical advisor on projects essential to operational activities, assisting in devising new and highly specialized methods or techniques of operations, or acting in a consultative capacity as a specialist in a highly technical field or as the possessor of broad administrative or professional knowledge. He may not perform duties of a supervisory or administrative nature within the Agency or engage in any other type of operational activity except as incidental to the performance of his advisory function. In this respect, consultants are distinguishable from experts and other types of temporary personnel as defined in R []

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b. EXPERT

An expert is an individual with exceptional qualifications and attainment in a particular line of work who is used to perform a regular service of a highly technical, professional, or administrative nature essential to the accomplishment of a certain function of the Agency. He may perform duties such as developing and putting into effect solutions to operating problems of a highly technical nature, supervising the execution of a highly technical function, conducting responsible activities which are integral parts of operating procedures, and making operational decisions as a specialist in a highly technical

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field of knowledge. An expert may have continuing operational, supervisory, or administrative responsibilities during each period of actual duty, since his primary function is to carry out operations for which his training and experience qualify him.

3. POLICY

- a. The Agency will obtain the services of consultant and expert personnel when there is a need for such exceptional or specialized services which cannot be met from available personnel resources, including staff employees and consultants and experts already under contract with the Agency. An individual may be used as a consultant or an expert only when this type of service is beneficial to the Agency from an administrative and financial standpoint and his services are not generally obtainable under other employment procedures.
- b. Since many highly qualified persons are willing to furnish services to the Agency without monetary reward, consideration will be given to obtaining an individual's services as a consultant or expert on a "without compensation" (WOC) basis before requesting his services on a compensated basis.

4. RESPONSIBILITIES

- a. Final approval of the services of specific individuals as consultants or experts may be granted only by the Director of Central Intelligence or his Deputy.
- b. The Deputy Directors (Plans), (Intelligence), and (Support) are responsible for ensuring that the use of consultants and experts is consistent with the policy in paragraph 3 above. The Deputy Directors will ensure within their jurisdictions that each request for employment of a consultant or an expert is documented as prescribed in this regulation and forwarded to the Director of Personnel for review and recommendation to the Director of Central Intelligence, or his Deputy, for final approval.
- c. The Director of Personnel is responsible for:
 - (1) Ensuring that the procedural requirements in this regulation are observed;
 - (2) Reviewing individual requests for the use of consultants or experts, including a determination if the Agency already has a staff employee, consultant or expert qualified to meet the requirement, and submitting his recommendations in such cases, together with an opinion on the appropriate rate of compensation, to the Director of Central Intelligence; and
 - (3) Conducting periodic reviews of the service or extensions of the service of consultants and experts.

5. PRIOR APPROVALS AND CONTACT CLEARANCE

- a. No approach will be made to any person regarding service as an Agency consultant or expert without prior clearance with the Deputy Director concerned, coordination with the Contact Division, Office of Operations, and receipt of a preliminary clearance from the Office of Security.
- b. No commitment regarding use of any kind will be made to a prospective consultant or expert prior to approval of the proposed service by the Director of Central Intelligence or his Deputy.

6. TERMS OF AGENCY USE**a. PERIOD OF SERVICE****(1) Consultants**

Consultants may be used for a fixed or indefinite period not to exceed the fiscal year in which used. Such service will normally be on an intermittent basis for a period of less than one calendar month in duration at any one time.

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(2) Experts

Experts will normally be used on an intermittent basis. They may not be used continuously in any single capacity in the same organizational element for more than one year, regardless of the fiscal period over which it is served. Neither may one expert succeed another expert in the same organizational element performing the same duties when the aggregate of the two periods of service will exceed one continuous year.

b. COMPENSATION

(1) Consultants and experts will be compensated in an amount commensurate with their respective duties and responsibilities and qualifications, or they may serve without compensation.

(2) Ordinarily, consultants will be paid a stipulated amount per day of service or per consultation, and experts will be paid for hours spent in a duty status. An intermittent consultant or expert will not be paid a rate of compensation in excess of \$50 per day.

c. TRAVEL AND PER DIEM

(1) Subject to the provisions of paragraph (2) immediately below, consultants and experts are entitled to payment or reimbursement of travel expenses when traveling between their homes or places of business and Washington, D. C., or other place of duty, and to per diem in lieu of subsistence, including Saturdays, Sundays, and holidays, when away from their residence or place of business on official duty for the Agency.

(2) After a consultant or expert serves more than one-half of full-time employment within a year, he may not receive such travel or per diem unless he serves without compensation or is compensated on a fee basis, i.e., at a stipulated amount per day of service or per consultation, regardless of the actual hours of work performed.

d. LEAVE

(1) Consultants and experts who are employed for a definite period of temporary duration with a prescribed period of duty and who are subject to the supervision and control of the Agency are entitled to accrue annual and sick leave, in accordance with the provisions of the Annual and Sick Leave Act of 1951, as amended, for all pay periods for which a regular tour of duty shall have been established in advance.

(2) Consultants and experts who are eligible for leave under the provisions above are not entitled to be credited with accrued annual and sick leave, however, until they shall have served for a continuous period of ninety days. The ninety-day period means the first continuous ninety days that an individual is in a contract status with the Agency following the effective date of his initial employment in the Agency, irrespective of the number of hours actually served by the consultant or expert during the ninety-day period. The first ninety days of service is continuous, provided there is no break in contract status during such period.

e. CIVIL SERVICE RETIREMENT AND SOCIAL SECURITY

(1) Consultants and experts are not entitled to coverage under the Civil Service Retirement Act, as amended, except that an individual may be subject to the Act by reason of his employment as a consultant or expert without a break in service following employment in which he had civil-service retirement status.

(2) Consultants and experts who meet all of the tests of eligibility under the Social Security Act, as amended, are covered by the Act. There is, however, a presumption that consultants and experts compensated on a fee basis or who serve without a substantial measure of supervision and control are not covered by the Act.

f. EMPLOYEES' COMPENSATION BENEFITS

(1) Consultants and experts, serving either with or without compensation, are entitled to the benefits provided by the Federal Employees' Compensation

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Act for injuries received while in the performance of their official duties, provided they are determined by the Agency to be in an employee status within the meaning of the Act at the time of such injuries.

- (2) The amount of compensation payable during such periods of disability and/or compensation payable in the form of death benefits to eligible dependents is determined by the Bureau of Employees' Compensation, pursuant to the Federal Employees' Compensation Act and the Bureau's regulations. Such benefits are based on the individual's rate of compensation or on the value of the services rendered in cases of individuals serving without compensation.
- (3) If the consultant or expert is entitled to employees' compensation benefits, as described in paragraph 6f(1) above, he is ordinarily entitled to coverage under the Act while in an official travel status to and from his duty station, but each case must be finally adjudicated by the Bureau of Employees' Compensation in order to determine whether or not the individual was actually engaged in the official performance of duty.

7. VISITS IN WASHINGTON, D. C., BY CONSULTANTS AND EXPERTS

Using offices will advise the Director of Personnel of impending visits of consultants or experts, giving the time and dates, when there is reason to believe that other offices can benefit from such visits.

8. PROCEDURES

a. PROCESSING REQUESTS FOR THE USE OF CONSULTANTS AND EXPERTS

- (1) Requests for the service of consultants and experts will be prepared by the requesting office on Standard Form 52: Request for Personnel Action, and forwarded through the Deputy Director concerned to the Director of Personnel. The Request will be accompanied by the following:
 - (a) A memorandum of justification addressed to the Director of Personnel and containing the following information:
 - (1) A statement of the contemplated duties and responsibilities, frequency of use, prescribed tour of duty if any, and desired period of service (Form No. 37-178: Position Description, should be used for the statement of duties and responsibilities);
 - (2) An explanation as to why other personnel resources of the component, including any consultants or experts, cannot be used;
 - (3) A positive statement must be included to indicate whether the rate of compensation requested is to be paid for a day of service, regardless of hours to be worked during the day, or payment is to be made at the rate requested on the basis of hours actually worked during the day; and
 - (4) Reasons for using a consultant or expert rather than a temporary employee compensated at a General Schedule rate. The relative administrative and financial effects of hiring a consultant or expert as compared with other temporary employees will be indicated.
 - (b) Personal History Statement Form No. 444 (formerly 38-1), Appendix I, and if applicable, Appendix II.
- (2) The Deputy Director concerned will consider the possibility of obtaining an individual's services on a "without compensation" (WOC) basis before requesting his service as a consultant or expert on a compensated basis. Use on a WOC basis will be processed in the same manner as the use of compensated consultants and experts in order to permit the individuals concerned to receive the other benefits to which consultants and experts are entitled.

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(3) If a review by the Director of Personnel indicates that the Agency already has a staff employee, a consultant, or an expert qualified to meet the new requirement, the requesting office will be so advised and the necessary arrangements made for joint use of the individual already employed, if he is otherwise available and the Director of Security concurs. If there is no qualified individual presently used by the Agency and available for the assignment, processing of the request by the Office of Personnel will continue. Such processing will include a review of the rate of compensation proposed by the requesting office in order to determine the rate of compensation to be recommended to the Director of Central Intelligence. This recommendation will, insofar as practicable, take into account position classification principles and practices applicable to positions in the Agency.

b. APPROVAL OF REQUESTS BY DIRECTOR

The memorandum of justification received with the SF-52 will be detached and forwarded with the recommendation of the Director of Personnel to the Director of Central Intelligence for final approval. The Office of Personnel will advise the Deputy Director concerned of the Director's action.

c. PROCESSING OF SECURITY CLEARANCE

Security clearances of consultants and experts will be processed in accordance with Regulation No.

d. FINAL PROCESSING OF REQUESTS FOR USE OF CONSULTANTS AND EXPERTS

(1) The Office of Personnel will notify the requesting office when the individual has been security cleared.

(2) Determination will be made regarding the date the consultant or expert will report to the office concerned. Prior to the time an individual reports for duty in Washington, D. C., the requesting office will inform the Office of Personnel of the reporting date and will refer the individual to the Office of Personnel at that time for processing. If the individual's first assignment is to be performed in a locality outside the Washington, D. C. area, the requesting office will indicate this fact in the "Remarks" section of the SF-52 when it is initiated in order that the necessary processing can be concluded.

(3) Arrangements will be made for the consultant or expert to be photographed and fingerprinted and to receive a security briefing, as required.

(a) Each consultant or expert who enters on duty in Washington, D. C., will be fingerprinted on the same day of his processing, except that the Office of Security may consider this requirement to be unnecessary for an individual who is obtained from another Federal agency.

(b) If an individual is to perform his first assignment in a locality outside the Washington, D. C. area, arrangements will be made to obtain his fingerprints prior to the assumption of his duties.

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- (4) The Office of Personnel will prepare a Personal Service Contract, Form No. 415 (formerly 37-53), and obtain the approval of the contract, when appropriate, by the General Counsel. The form will designate a waiver of compensation whenever a consultant or expert agrees to serve without compensation.

e. PROCESSING OF SUBSEQUENT CHANGES IN TERMS OF SERVICE BY CONSULTANTS OR EXPERTS

Any material alteration of the terms of the contract, including the conversion of a consultant or expert from a WOC basis to compensation status, will be processed in accordance with the procedures in paragraphs 8a(1), 8a(3), 8b, 8c, and 8d above, as applicable.

f. EXTENSION OF SERVICE BY CONSULTANTS AND EXPERTS

- (1) The Office of Personnel will establish and maintain appropriate record systems so that at least 60 days prior to the scheduled expiration of Personal Service Contracts, such contracts may be reviewed and notification of such scheduled expiration sent to the component concerned.
- (2) Requests for extension of consultant or expert services will be made to the Office of Personnel at least one month prior to the expiration of the current agreement. The renewal or extension of consultant or expert contracts requires the concurrence of the Director of Security and the prior written approval of the Director. The Office of Personnel will obtain such concurrence and approval.

g. REPORTS

The Director of Personnel will prepare quarterly reports on the service of consultants and experts for transmission to the Inspector General. The Inspector General will review the reports and make such recommendations to the Director as he considers appropriate.

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE:

L. K. WHITE
Deputy Director
(Support)

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